



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

### Dispute Codes:

MNDCT, FFT

### Introduction

This hearing was convened in response to the Tenants' application for a monetary Order for money owed or compensation for damage or loss under the *Residential Tenancy Act* (Act), Regulation or tenancy agreement and to recover the fee for filing this Application for Dispute Resolution.

The female Tenant stated that on December 18, 2018 the Application for Dispute Resolution, the Notice of Hearing, and evidence the Tenants submitted to the Residential Tenancy Branch in December of 2018 were sent to the Landlord, via registered mail. The Agent for the Landlord acknowledged receipt of these documents and the evidence was accepted as evidence for these proceedings.

On January 26, 2019 the Tenants submitted evidence to the Residential Tenancy Branch. The female Tenant stated that this evidence was served to the Landlord, via registered mail, on March 18, 2019. The Agent for the Landlord acknowledged receiving this evidence and it was accepted as evidence for these proceedings.

On March 26, 2019 the Landlord submitted evidence to the Residential Tenancy Branch. The Agent for the Landlord stated that this evidence was served to the Tenant, via courier, on March 26, 2019. The Tenants acknowledged receiving this evidence and it was accepted as evidence for these proceedings.

The parties were given the opportunity to present relevant oral evidence, to ask relevant questions, and to make relevant submissions. The parties were advised of their legal obligation to speak the truth during these proceedings.

Issue(s) to be Decided

Are the Tenants entitled to compensation, pursuant to section 51(2) of the *Act*, because steps were not taken to accomplish the stated purpose for ending the tenancy under section 49 within a reasonable period after the effective date of the notice or the rental unit was not used for that stated purpose for at least 6 months beginning within a reasonable period after the effective date of the notice?

Background and Evidence

The Landlord and the Tenants agree that:

- at the end of the tenancy the Tenants were paying rent of \$1,605.00 per month;
- on May 29, 2018 the Landlord personally served the Tenants with a Two Month Notice to End Tenancy for Landlord's Use of Property;
- the Notice to End Tenancy declared that the rental unit must be vacated by July 31, 2018; and
- the Notice to End Tenancy declared that the tenancy was ending because the Landlord or a close family member of the Landlord intends in good faith to occupy the rental unit.

The female Tenant stated that the rental unit was vacated on August 04, 2018. The Agent for the Landlord stated that it was vacated on August 05, 2018.

The Agent for the Landlord stated that:

- his parents, one of whom is the Respondent Landlord, intended on moving into the rental unit in August of 2018;
- in September of 2018 the gutters backed up and water leaked into the unit, which temporarily prevented his parents from moving into the unit;
- it took 20-30 days to repair the damage caused by this leak;
- in October of 2018 a pipe burst and water leaked into the unit, which temporarily prevented his parents from moving into the unit;
- it took 20-30 days to repair the damage caused by this broken pipe;
- in August they discovered rodents in the house;
- it took until December of 2018 to rectify the problems associated to the rodent infestation, which was delayed by the floods;
- nobody was living in the house while the aforementioned deficiencies were being addressed;
- on January 07, 2019 his parents moved into the rental unit;
- on January 07, 2019 he placed an advertisement on a popular website, in which he advertised the unit for rent;
- the unit was advertised simply to see how much income could be generated;
- if the Landlord was able to rent the upper portion of the home the Landlord would have moved into the lower unit;

- the advertisement was removed on January 08, 2019;
- the Landlord decided to generate income by sharing their home with students;
- the residential property was for sale prior to the Two Month Notice to End Tenancy being served;
- the Landlord continued to attempt to sell the property after the Tenants vacated the unit;
- the property was removed from the retail market on December 07, 2018; and
- the property was removed from the retail market because they did not receive an offer that suited the Landlord.

The female Tenant stated that:

- friends who were living in the vicinity told them that nobody had moved into the house by December of 2018;
- the Tenants do not know if the Agent for the Landlord's parents moved into the rental unit;
- she does not know if the Agent for the Landlord's parents are still living in the rental unit;
- she located an advertisement on a popular website, which was posted on January 07, 2019;
- the advertisement offered this rental unit for rent; and
- she has not seen another rental advertisement for this unit since the unit was vacated by the Tenants.

The male Tenant stated that:

- the residential property was for sale prior to the Two Month Notice to End Tenancy being served;
- the Landlord continued to attempt to sell the property after the Tenants vacated the unit; and
- he understands the Landlord received at least one offer to purchase the property.

### Analysis

On the basis of the undisputed evidence I find that the Tenants were served with a Two Month Notice to End Tenancy, served pursuant to section 49 of the *Act*; that the Notice required the Tenants to vacate the rental unit by July 31, 2018; and that the Notice declared that the Landlord or a close family member of the Landlord intended, in good faith, to occupy the rental unit.

Section 51(2)(a) of the *Act* stipulates that if a tenant is served with a notice to end tenancy pursuant to section 49 of the *Act* and if steps have not been taken, within a reasonable period after the effective date of the notice, to accomplish the stated purpose for ending the tenancy, the landlord must pay the tenant an amount that is the

equivalent of twelve times the monthly rent payable under the tenancy agreement.

On the basis of the testimony of the Agent for the Landlord, the moving invoice that was submitted in evidence and in the absence of any evidence to the contrary, I find that the Landlord moved into the rental unit on January 07, 2019, which is approximately five months after the rental unit was vacated by the Tenants.

On the basis of the of the Agent for the Landlord and the photographs and invoices submitted in evidence, I find that the Landlord made some significant repairs prior to moving into the rental unit which were necessary, in part, due to two floods and a rodent infestation. Given the nature of these repairs, I find it was reasonable for the Landlord to delay moving into the rental unit for a period of five months. By making these necessary repairs I find that the Landlord took steps to move into the rental unit within a reasonable period after the effective date of the Notice to End Tenancy. I therefore find that the Tenants are not entitled to compensation pursuant to section 51(2)(a) of the *Act* and I dismiss their claim.

In adjudicating this matter I have placed little weight on the undisputed evidence that the Landlord advertised the rental unit for rent on the same day the Landlord moved into the rental unit and that the advertisement was removed the next day. Although the Agent for the Landlord's explanation that the rental unit was advertised for one day solely for the purpose of determining the income it could generate seems rather illogical, the evidence shows that the Landlord is living in the unit and the Landlord has not rented it exclusively to a third party. I therefore find that the advertisement is largely irrelevant, as it does not establish that the Landlord has not moved into the unit.

In adjudicating this matter I have placed little weight on the undisputed evidence that the rental unit was advertised for sale prior to the Tenants being served with the Notice to End Tenancy and that it remained on the market until December of 2018. Given the amount of time it could potentially take to find a purchaser and to complete a sale, I find it entirely possible that a landlord could move into a rental unit for a substantial period of time prior to completing a sale. I therefore find that the fact the property was for sale is largely irrelevant, as it does not establish that the Landlord has not moved into the unit.

I find that the Tenants have failed to establish the merit of their Application for Dispute Resolution and I dismiss their application to recover the cost of filing this Application for Dispute Resolution.

Conclusion

The application for compensation pursuant to section 51(2)(a) of the *Act* is dismissed.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under Section 9.1(1) of the *Residential Tenancy Act*.

Dated: April 04, 2019

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Residential Tenancy Branch